REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Status of Claims

Claims 1-10 and 12-15 are currently pending, of which claims 1, 12 and 14 are independent.

In the Office Action dated January 20, 2010, claims 1-15 were rejected.

By virtue of the amendments above, claims 1, 4, 7, 10, 12, and 14 have been amended and claim 11 has been canceled without prejudice or disclaimer of the subject matter therein.

Independent claims 1, 12, and 14 were amended to include the features recited in the now-canceled claim 11. Claims 4, 7, and 10 were amended to clarify elements recited therein.

It is submitted that no new matter has been introduced by the above amendments. Entry thereof is therefore respectfully requested.

Summary of the Office Action

Claims 1-15 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,792,323 to Krzyzanowski et al. (hereinafter "Krzyzanowski") in view of U.S. Patent No. 6,982,962 to Lunsford et al. (hereinafter "Lunsford") and U.S. Patent Application Publication No. 2002/0089687 to Ferlitsch et al. (hereinafter "Ferlitsch").

The rejection above is respectfully traversed for at least the reasons set forth below.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

> "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

> (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) ''Obvious to try''—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces

> if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 1-8 and 12-15:**

Claims 1-15 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Krzyzanowski in view of Lunsford and Ferlitsch. The rejection is respectfully traversed for at least the following reasons. Note that claim 11 has been canceled.

  - Independent Claims 1, 12, and 14:

Independent claims 1, 12, and 14 have been amended to include the features previously recited in dependent claim 11. Specifically, independent claims 1, 12, and 14 recite, *inter alia*,

> wherein calculating the score for each functionally responsive combination is based on:

$$AS(A, AP) = \sum_{i=1}^{n} sw_i(D, AP) * e(D_i) * DS_i(D, DP_i)$$

where:

A is a particular functionally responsive combination;

AP is a combination-level policy;

AS is a calculated score;

n is a number of devices that are included in said particular combination;

sw_i is a weight assigned to each device of type *i* according to said combination-level policy *AP;*

DP is a device scoring policy based on the user preference information;

DS_i is an unweighted device score for each device *D;* and

$e(D_i)$ is a percentage indicating availability of said device D_i.

The combination of Krzyzanowski in view of Lunsford and Ferlitsch fails to teach or suggest the claimed features recited above for at least the following reasons.

In the rejection of claims 1 and 11, the Office Action admits that Krzyzanowski fails to teach or suggest calculating a score for each functionally responsive combination based on a weight assigned to each device in the functionally responsive combination, an unweighted device score for each device, and a percentage indicating the availability of each device (See *Office Action*, page 5). The Office Action then asserts that the features recited above are taught by Lunsford and Ferlitsch (See *Office Action*, pages 5 and 9). Specifically, Lunsford discloses in col. 6, line 45 to col. 7, line 33, a method of evaluating network access providers against a user's preferences, by calculating a score for each device or network access provider, sorting the list of network access providers based upon the scores, and allowing the user to select one of the network access providers to connect to a network. Ferlitsch discloses in paragraph [0050],

ranking devices according to their availability. From those disclosures of Lunsford and Ferlitsch, the Office Action asserts that Lunsford and Ferlitsch teach the features recited above in claim 1 (See *Office Action*, pages 5 and 9).

However, that assertion is respectfully traversed. First, even if assuming for the sake of argument that the combination of Lunsford and Ferlitsch discloses the weight assigned to each device according a combination-level policy (*sw(D, AP)*), an unweighted device score for each device (*DS(D, DP)*), and a percentage indicating the availability of each device (*e(D)*), as asserted in the Office Action, the combination of Lunsford and Ferlitsch still fails to teach or suggest multiplying those three elements: *sw(D, AP)*e(D)*DS(D, DP)*, to calculate the score of each device, as recited in claim 1. In Lunsford or Ferlitsch, there is no obvious reason or motivation to modify the calculating of the scores of each device by multiplying those three features.

Second, as discussed above, Lunsford discloses evaluating the devices or network access providers by calculating the scores for each network access provider, sorting the network access providers according to their scores, and allowing the user to select one of those network access providers to connect to the network. Thus, Lunsford calculates the score for each device, but not the score for a combination of devices, as recited in claim 1. Because the user connects to the network via only one network access provider, there is no motivation to modify Lunsford to calculate the score of combinations of devices. Therefore, Lunsford fails to teach or suggest calculating the score of each of the functionally responsive combinations of devices, as recited in claim 1. Because Lunsford fails to teach calculating the score for each of the combinations of

devices, Lunsford also fails to teach or suggest calculating the scores based upon the summation (i.e., $_{i=1}\sum^{n}$) of the scores of a plurality of devices, as recited in claim 1.

In the rejection of dependent claim 11, the Office Action asserts that Lunsford in view of Ferlitsch discloses the claimed summation (i.e., $_{i=1}\sum^{n}$) of the scores of a plurality of devices because the claim does not define "n", so n can be 1 (See *Office Action*, page 9). However, that argument is respectfully traversed because even though n can be 1, claim 1 still recites the summing $_{i=1}\sum^{n}$ of the scores of all devices . Lunsford in view of Ferlitsch fails to teach or suggest such a summation. Therefore, even if the calculating of the scores and percentage of availability in Lunsford in view of Ferlitsch may yield the same as the result of the summation $_{i=1}\sum^{n}$ as recited in claim 1 when n is 1, Lunsford in view of Ferlitsch still fails to teach or suggest the summing $_{i=1}\sum^{n}$ of the scores *sw(D, AP)*e(D)*DS(D, DP)* of the devices in each combination, as recited in claim 1.

Note that in the rejection of claim 11, the Office Action asserts that the claimed parameters such as the value n, the combination-level policy, and the unweighted device scores are not defined and needed to be clarified (See *Office Action*, bottom of page 9). That assertion is respectfully traversed because these terms can be readily understood by one skilled in the art. For instance, the value n is an integer because n is related to the number of devices. In addition, the combination-level policy is the policy on the level of the combination of devices instead of individual devices. Finally, one of ordinary skill in the art would have understood that "unweighted" device score means the device is not weighted when it is assigned a score.

For at least the foregoing reasons, the Office Action has failed to establish that independent claims 1, 12, and 14 are *prima facie* obvious in view of the combined disclosures contained in Krzyzanowski in view of Lunsford and Ferlitsch, as proposed in the Office Action. Therefore, withdrawal of the rejection of independent claims 1, 12, and 14 and allowance of these claims are respectfully requested.

- Dependent Claims 2-10, 13 and 15:

Claims 2-10, 13 and 15 are dependent from one of the independent claims 1, 12 and 14. Thus, they are also believed to be allowable over the cited documents of record for at least the same reasons as set forth to independent claims 1, 12, and 14 above.

Furthermore, these dependent claims recite additional features not found in the cited documents of record. For instance, claim 7 recites, $aw_i(DP) * D(v_i)$. Although Lunsford discloses calculating the score of each device and Ferlitsch discloses ranking the devices according to their availability, Lunsford and Ferlitsch do not teach or suggest the multiplication of the weight of each attribute according to a policy $aw_i(DP$ and the device's value for attribute $D(v_i)$, as recited in claim 7.

It is therefore respectfully requested that the rejection of claims 2-10, 13, and 15 be withdrawn, and these dependent claims be allowed.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: April 20, 2010 By /Ashok K. Mannava/

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